

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

DAMON HOLMES,

Plaintiff,

v.

CLIFF HARRIS; KEVIN SHUTTE,  
Defendants.

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Civil Action No. 5:21-CV-102-RWS-JBB

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE**

Damon Holmes, proceeding *pro se*, filed the above-captioned civil action complaining of alleged violations of his constitutional rights. Docket No. 1. The case was referred to a magistrate judge in accordance with 28 U.S.C. § 636.

In his complaint, Plaintiff seeks to have certain charges dismissed and expunged from his record on the grounds that the charges lack validity. Docket No. 1 at 3–4. In his report and recommendation, the magistrate judge determined that Holmes’s claims implicated the fact or legality of his confinement and re-characterized the lawsuit as a petition for the writ of habeas corpus. Docket No. 2 at 1 (citing *Solsona v. Warden, F.C.I.*, 821 F.2d 1129, 1131 n.1 (5th Cir. 1987)). The magistrate judge then recommended that the habeas petition be dismissed without prejudice for failure to exhaust state remedies. *Id.* at 3.

Holmes received a copy of the magistrate judge’s report and recommendation on February 27, 2023 (Docket No. 3) and has filed no objections. Accordingly, the Court reviews the magistrate judge’s findings of fact and legal conclusions for plain error. *Duarte v. City of Lewisville, Tex.*, 858 F.3d 348, 352 (5th Cir. 2017). Having reviewed the record, the Court finds

that the magistrate judge's report and recommendation is correct. Accordingly, it is

**ORDERED** that the magistrate judge's report (Docket No. 2) is **ADOPTED** as the opinion of the Court. It is further

**ORDERED** that the above-captioned action, construed as a pretrial application for writ of habeas corpus, is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state remedies.

A certificate of appealability is **DENIED** with relation to the present case. The dismissal of this lawsuit shall not prevent Plaintiff from defending himself against the criminal charges against him, seeking direct appeal from any conviction or convictions which he may incur, or seeking any post-conviction relief such as state or federal habeas corpus proceedings. It is further

**ORDERED** that any and all motions which may be pending in this civil action are **DENIED-AS-MOOT**.

**So ORDERED and SIGNED this 20th day of July, 2023.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE